

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 428 of 1997

in

SPECIAL CIVIL APPLICATION No 1976 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and  
MR.JUSTICE A.L.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----

MC SOLANKI

Versus

DISTRICT HEALTH OFFICER

-----  
Appearance:

MR PB MAJMUDAR for Appellant  
MR HS MUNSHAW for Respondent No. 1  
NOTICE SERVED for Respondent No. 2

-----  
CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE A.L.DAVE

Date of decision: 04/02/99

ORAL JUDGEMENT

The appellant herein was appointed as Female Health Worker under respondent No.1 (hereinafter referred

to as "the Panchayat"). The appellant was found continuously absent from 1991 and, therefore, after holding inquiry, the appellant was removed from service by an order dated 1st February, 1997. It is required to be noted that appeal could have been filed against that order under the Gujarat Panchayats (Discipline and Appeal) Rules, 1964.

Before the learned Single Judge, learned advocate appearing in the matter insisted for a decision instead of relegating the petitioner-appellant to alternative remedy and, therefore, the learned Single Judge decided the matter on merits. The request made before the learned Single Judge was that the petitioner could not report for a pretty long period on account of family circumstances and reported only on 12th January, 1996. However, as averred, she was permitted to join from 12th January, 1996 with a clear understanding that no disciplinary action would be taken against her for her absence without leave. It was further contended by the learned advocate for the appellant that no copy of the report was supplied and no opportunity was given to her on the question of proposed penalty and, therefore, the impugned order of punishment must be quashed.

The learned Single Judge, after considering various decisions cited, held that the failure on the part of the Disciplinary Authority in furnishing copy of the Inquiry Officer's report to the delinquent would not necessarily vitiate the order of punishment. It would not be necessary to examine whether on account of such failure prejudice has been suffered by the delinquent or not. In the case of Union Bank of India v. Vishwa Mohan, 1998(1) LLJ 1217, the Apex Court considered the non-supply of report and failure of the employee to demonstrate how the prejudice was caused to him due to the non-supply of inquiry report. The Apex Court in the case of Central Bank of India Limited v. Karunamoy Banerjee, reported in AIR 1968 SC 266, considered the question of giving an opportunity. On admission of the guilt by the employee will it not be an empty formality? In paragraph 18, it is observed :

"..Even when the inquiry proceedings began, he had stated that he had nothing more to add, in respect of the charges framed against him. When once the workman himself has, in answer to the charge levelled against him, admitted his guilt, in our opinion, there will be nothing more for the management to inquire into. This was the position in the case before us. Therefore, we

are not inclined to agree with the reasoning of the Labour Court that when there has been an admission of guilt by the respondent himself, it can still be stated that there is a violation of the principles of natural justice merely because of the fact that the workman was examined, in the first instance."

The Apex Court pointed out in paragraph 19 of the said judgment that "we must, however, emphasize that the rules of natural justice laid down by this Court will have to be observed in the conduct of a domestic inquiry against a workman. If the allegations are denied by the workman, it is needless to state that burden of proving the truth of those allegations will be on the management and the witnesses called, by the management, must be allowed to be cross-examined, by the workman and the latter must also be given an opportunity to examine himself and adduce any other evidence that he might choose, in support of his plea. But, if the workman admits his guilt, to insist upon the management to let in evidence about the allegations, will, in our opinion, only be an empty formality". (emphasis supplied).

In the instant case, when the show cause notice was given, the appellant has not submitted any reply to the charge sheet issued against her on 8.6.1994. The inquiry commenced and before the Inquiry Officer, she appeared and admitted her guilt. It is in view of the said admission of guilt, further proceedings were required to be held. The learned Judge has rightly come to the conclusion that the appellant has suffered no prejudice on account of failure on the part of the Disciplinary Authority in furnishing copy of the report of Inquiry Officer.

The learned Single Judge has also considered the question raised by the appellant that the appellant ought to have been heard on the question of punishment, which was proposed to be imposed on her. The Apex Court's judgments were considered wherein the Court has held that in view of the 42nd Amendment to the Constitution of India, delinquent is not required to be heard on the penalty proposed to be imposed upon her. The Court categorically held that "this ruling, however, not to be understood as reviving pre-42 Amendment position of hearing before disciplinary authority either on the proof of the charge or on the imposition of the penalty". The learned Single Judge, in our view, has rightly negatived the contentions raised by learned advocate, Mr. Majmudar.

In view of what we have stated hereinabove, we  
find no merits in the appeal and is, therefore,  
dismissed.

...  
gt